

IN THE CROWN COURT IN NORTHERN IRELAND

—
THE QUEEN

-v-

JASON KING
—

GILLEN J

[1] The stage has been reached in this trial where the evidence has now concluded and the time has arrived for closing speeches and the summing up of the judge.

[2] This has been a trial involving complex issues with eight complainants, bad character evidence introduced under the Criminal Justice (Evidence) (Northern Ireland) Order 2004 (“the 2004 Order”) and 64 counts on the indictment largely comprising allegations of sexual offences against children and young women. Those counts include charges of eight different types.

[3] Blackstone’s Criminal Practice 2008 at paragraph D17.24 records:

“Occasionally, in a complex case, the judge may provide the jury with a written list of questions or directions to assist them in their task, setting out the legal issues which must be proved in order to reach their verdict, often described as the ‘steps to verdict’. If he does so, he should submit to counsel well in advance, so they can comment upon any errors and base their closing speeches upon the issues raised in the proposed directions. The jury should then be given the written list at the start of the summing up, so that the judge can take them through the directions one by one, as he deals with each point. See McKechnie (1992) 94 Cr. App. R. 51.”

[4] In the wake of Article 6 of the European Convention on Human Rights and Fundamental Freedoms and the need to ensure a fair trial in circumstances where juries do not hand down reasoned decisions for their verdicts it is now not uncommon for written directions to be given to juries to ensure there is no room for confusion or misunderstanding as to the legal principles which they must observe. This need will more readily arise where as in this instance the trial has been long and the legal issues complex. I consider that the principle of written directions applies to instances where, as in this case, the charges cover a wide variety of offences, some of which provide a defence if there is consent and others for which consent does not provide a defence. It is crucial that the jury members remain aware of the different ingredients in the disparate counts and not become confused in the process. In those circumstances it is appropriate that the judge should provide for the jury a written copy of directions on the law governing the individual types of charge after discussing the matter with counsel.

[5] It is also customary for there to be discussion on the contents of the charge to the jury between counsel and the judge at the end of evidence and in any event before the judge begins his summing up. Such a discussion is important so as to reach an understanding as to how points of law and evidence which have arisen during the course of the case should be dealt with. In R v Taylor (Julie Anne) (2003) EWCA Crim. 2447, in a complex case involving provocation and diminished responsibility, Latham LJ said:

“It is perhaps a pity in cases such as this, where the court is confronted with the complex problem of directing the jury as to both provocation and diminished responsibility, that counsel were not invited to consider a proposed draft direction and comment on it. That would have avoided the problem that has arisen in this case.”

[6] Whilst that statement was made in the context of the vexed problem of provocation and diminished responsibility, I consider that such a principle also applies to a case such as this where, inter alia, the jury must be instructed in simple and clear terms as to the relevance and purpose of bad character evidence and the use that the jury might make of it (see also R v Tirnaveanu (2007) 4 AER 301 and N (1998) Crim. LR. 886).

[7] Accordingly I have now given to counsel in this case my proposed draft directions on a number of discrete issues that have arisen for their comments thereon including my proposed directions on the offences alleged in the indictment, delay, specimen counts, bad character evidence, innocent contamination and dishonest collusion and the relevance of a possible finding by the jury that the accused is telling lies (the so called “Lucas “direction). I have invited counsel to discuss with me alternative defences, alternative

verdicts, the need for a special care direction and any other matter of law that requires to be addressed in addition to the conventional contents of a charge.

[8] It is appropriate that this step should be taken before counsel have made their closing speeches so that they can comment upon any errors and can base their closing speeches upon the issues raised in the proposed directions. I have invited counsel to make written submissions to me on any matter arising there from so as to form an informed basis for discussion before the speeches commence.